

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leilani Rhodes	Team: Squad #9	CCRB Case #: 201900015	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 12/17/2018 1:30 AM	Location of Incident: [REDACTED]	Precinct: 121	18 Mo. SOL 6/17/2020	EO SOL 2/1/2021	
Date/Time CV Reported Sun, 12/23/2018 1:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/31/2018 10:42 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Bruno Pomponio	02023	947366	121 PCT
2. POM Jose Tabora	17232	943856	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Compton	03021	950224	121 PCT
2. POM Yuhua Zhang	23810	953602	121 PCT
3. POM Tommaso Frasca	09755	963524	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Bruno Pomponio	Abuse: Sergeant Bruno Pomponio entered § 87(2)(b)'s bedroom § 87(2)(b) in Staten Island.	[REDACTED]
B.POM Jose Tabora	Force: Police Officer Jose Tabora used physical force against § 87(2)(b)	[REDACTED]
C.POM Jose Tabora	Force: Police Officer Jose Tabora restricted § 87(2)(b)'s breathing.	[REDACTED]
D.SGT Bruno Pomponio	Abuse: Sergeant Bruno Pomponio forcibly removed § 87(2)(b) to the hospital.	[REDACTED]

### Case Summary

§ 87(2)(b) filed this complain with IAB on December 23, 2018, generating Original Log Number 18- 50185. The CCRB received this case on December 31, 2018.

On December 17, 2018, at approximately 1:30 a.m., § 87(2)(b) s father called 911 and told the operator that § 87(2)(b) needed psychiatric help. PO Jose Tabora, PO Michael Compton, and Sgt. Bruno Pomponio, from the 121st Precinct, responded to § 87(2)(b) s residence located at § 87(2)(b) in Staten Island. The officers entered § 87(2)(b) s bedroom without his consent (**Allegation A: Abuse of authority, § 87(2)(g)** PO Tabora used force against § 87(2)(b) in order to place him in handcuffs. (**Allegation B: Force, § 87(2)(g)** This force allegedly restricted § 87(2)(b) s breathing (**Allegation C: Force, § 87(2)(g)** § 87(2)(b) was removed to § 87(2)(b) Hospital against his will (**Allegation D: Abuse of Authority, § 87(2)(g)** No arrests were made and no summonses were issued as a result of this incident.

Five body worn camera videos were received in regards to this incident (Board Reviews 5, 6, 13-15).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Bruno Pomponio entered § 87(2)(b) s bedroom § 87(2)(b) in Staten Island.**

**Allegation (D) Abuse of Authority: Sergeant Bruno Pomponio forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that § 87(2)(b) s father called 911 and told the operator that § 87(2)(b) had mental health issues and was attempting to harm himself (Board Review 12). It is also undisputed that when officers responded to the location, § 87(2)(b) refused to allow them into his bedroom. It is further undisputed that officers pried § 87(2)(b) s door open with a metal object provided to them by § 87(2)(b) s father. Lastly, it is undisputed that § 87(2)(b) was taken to § 87(2)(b) Hospital.

Officers are permitted to enter a premise without a warrant if they reasonably believe that there is an immediate need for their assistance for the protection of life or property and a reasonable basis to associate the emergency with the area being entered. People v. Doll, 21 N.Y.3d 665 (2013) (Board Review 16).

**Patrol Guide Procedure 221-13** states that when a uniformed member of service reasonably believes that a person is apparently mentally ill or emotionally disturbed and is conducting himself in a manner likely to result in serious injury to himself or others, they may take the person into protective custody and have them removed to the hospital. (Board Review 07).

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Force: Police Officer Jose Tabora used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Jose Tabora restricted § 87(2)(b)'s breathing.**

§ 87(2)(b) stated that after the officers entered his bedroom, an officer used a shield to push him down onto his bed. PO Compton then grabbed the back of his head, pushed his face into the mattress, and stepped on his ankle. He screamed and told PO Compton that his ankle was hurting. He did not remember how long PO Compton was standing on his ankle for, or how PO Compton responded to him stating that he was in pain. § 87(2)(b) could not remember when he was handcuffed. § 87(2)(b) stated that these actions restricted his breathing but that he did not mention this to the officers. (Board Review 01).

PO Tabora's BWC footage, located in IA 90, begins with PO Tabora standing outside of § 87(2)(b)'s bedroom door, asking him to open the door. § 87(2)(b)'s bedroom door opens and § 87(2)(b) is seen standing up facing the officers. PO Tabora orders him to show his hands and § 87(2)(b) briefly puts his hands up. § 87(2)(b) then turns and reaches for something on his bed. PO Tabora repeatedly orders § 87(2)(b) not to touch anything and grabs § 87(2)(b) by his arm. There is a scuffle, in which the officers' and § 87(2)(b)'s actions are not clearly seen. (Board Review 05)

At 2:25 into PO Tommaso Frasca's BWC footage, located in IA 89, PO Tabora, who is holding a shield, walks into § 87(2)(b)'s bedroom and asks § 87(2)(b) to show him his hands twice and instructs him not to touch anything multiple times. During this time, the video is obstructed by PO Tabora's body. As PO Frasca changes position, PO Tabora can be seen grabbing § 87(2)(b) by his arm and there is a scuffle, in which the officers' and § 87(2)(b)'s actions are not clearly seen. PO Tabora instructs the other officers to handcuff § 87(2)(b) as § 87(2)(b) is lying face down on the bed. § 87(2)(b) is handcuffed and an officer states, "I got the chisel." (Board Review 14)

At 4:50 into Sgt. Pomponio's BWC footage, located in IA 88, Sgt. Pomponio holds up the chisel as he announces, "I got the chisel." (Board Review 06)

Sgt. Pomponio stated that once entry was made into § 87(2)(b)'s bedroom, § 87(2)(b) was instructed to put down the cell phone and air plane drone he had in his hands about three to four times. § 87(2)(b) refused to comply with the officers' instructions and reached for a chisel that was on his bed. At that point, PO Tabora put his shield straight up to § 87(2)(b)'s body on his right side, perpendicular to the floor. He used the shield to bring § 87(2)(b)'s upper body down to the bed and held him there. He kept the shield on top of § 87(2)(b) in order for the officers to get his arms and handcuff him. Sgt. Pomponio stated that he did not recall if PO Compton ever grabbed § 87(2)(b)'s head or pushed his face into the mattress. He did not recall if PO Compton stepped on § 87(2)(b)'s ankle. He did not recall whether § 87(2)(b) complained of being in pain (Board Review 03).

PO Compton stated that he never grabbed the back of § 87(2)(b)'s head or pushed his face into the mattress. He also stated that he never stepped on his ankle and did not remember if § 87(2)(b) complained that his ankle was hurting or of any other pain. (Board Review 02).

Video footage shows that PO Tabora was the first officer to initiate a use of force against § 87(2)(b) and that the other officers only handcuffed § 87(2)(b) at the instructions of PO Tabora. Therefore, all force allegations are pleaded against PO Tabora. § 87(2)(b), § 87(2)(g)

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**Patrol Guide Procedure 221-13** states that when a uniformed member of service reasonably believes that a person is apparently mentally ill or emotionally disturbed and is conducting himself in a manner likely to result in serious injury to himself or others, reasonable force necessary to take the person into protective custody may be used. (Board Review 07)

§ 87(2)(b), § 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to one CCRB complaint, and has been named victim in four allegations (Board Review 08).
  - § 87(2)(b)
- Sgt. Pomponio has been a member of service for 11 years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated.
- PO Tabora has been a member of service for 12 years and has been a subject in nine CCRB complaints and 30 allegations, one of which was substantiated:
  - 201411625 involved a substantiated allegation of a question. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review Board Review 09).
- As of August 5, 2019, § 87(2)(b) has not filed a Notice of Claim against the City of New York (Board Review 10).

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Squad No.: 9

Investigator: Leilani Rhodes Inv. Leilani Rhodes 4/20/2020  
Signature Print Title & Name Date

Squad Leader: Monique West IM Monique West 5/8/2020  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date